Sectol
I-1.o

Nov. 6, 1934
4:45 p. m.

APERTURA DE LA SESION

Se abre la sesi´on a las 4:45 p. m., bajo la presidencia del Hon. Claro M. Recto.

EL PRESIDENTE. Lease la lista de los Delegados.

SR. ESCAREAL. Sr. Presidente, pido que se dispense la lectura de la lista.

EL PRESIDENTE. Hay alguna objecion? (Silencio). La Mesa no oye ninguna. Se dispensa la lectura de la lista. Hay quorum.

APROBACION DEL ACTA.

SR. ESCAREAL. Sr. Presidente, pido igualmente que se dispense la lectura del acta, y que la misma se dé por aprobada.

EL PRESIDENTE. Hay alguna objecion? (Silencio). La Mesa no oye ninguna. Aprobada.

TRASLADO DE ASSNTOS

EL SECRETARIO, leyendo:

SR. VILLARAMA. Sr. Presidente, pido que se lea el proyecto de Resolucion No. 97 que he presentado y que obra en poder del Secretario.

EL PRESIDENTE. Lease el proyecto de resolucion.

EL SECRETATIO leyendo:

P. R. No. 97

Presentado por los Delegados Navarro y Villarama

R E S O L U C I O N
ENCOMENDANDO A LOS PRESIDENTES DE COMITE LAS PONENCIAS PARCIALES SOBRE EL PROYECTO DE CONSTITUCION.

Se resuelve, Que las ponencias parciales sobre el proyecto de Constitucion se encomienden al Presidente del Comite respectivo en cuanto a aquellas partes del proyecto que literal o sustancialmente se han tomado del informe

o recomendacion de dicho Comite.

EL PRESIDENTE. Puede votarse el proyecto de resolucion?

LA ASAMBLEA. Si.

EL PRESIDENTE. Los que esten en favor de dicha resolucion tengan la bondad de decir si.

LA ASAMBLEA:Si.

EL PRESIDENTE. Los que esten en contra, sirvanse decir no. (Silencio). Aprobada.

SR. BUENDIA. Sr. Presidente, pido que se lea el Proyecto de Resolucion No. 98, que obra en poder del Secretario.

EL PRESIDENTE. Lease el proyecto de resolucion.

eEL SECRETARIO, leyendo:

Res. No. 98

Introduced by Delegates Buendia and Lesaca.

RESOLUTION
EXPRESSING THE PLEASURE OF THE CONVETION OVER THE SUCCESS OF THE OPERATION PERFORMED UPON THE ILLUSTRIOUS FILIPINO LEADER, HONORABLE MANUEL L. QUEZON.

Be it resolved, To express, and it it hereby expressed the pleasure with which the members of the Constitutional Convention have received the news of the success of the operation recently performed in the United States upon the illustrious Filipino leader and spokesman, the Honorable Manual L. Quezon.

Be it resolved, further, That this Resolution be transmitted by cable to the Honorable Manuel L. Quezon in the United States by the President of the Convention.

Adopted,

EL PRESIDENTE. Esta dispuesta la Asamblea a votar el proyecto de resolucion?

MR. ESCAREAL. Just for a point of information. I would just like to ask the author if it is possible to do it personally instead of passing it through the Convention.

EL PRESIDENTE. Los que esten conformes con el proyecto de resolucion, tengan la bondad de decir si.

LA ASAMBLEA. Si

EL PRESIDENTE. Los que esten en contra, sirvanse decir no. (Silencio). Aprobada.

Esta en orden ahora la consideracion del proyecto de constitucion.

SR. GULLAS. Para una information.

MR. GULLAS. Mr. President, before we proceed with the discussion of the Constitution, will a small motion to insert an amendment with regard to the time within which the plebiscite of woman suffrage should be held be out of order at this stage of the proceedings? This motion should have been submitted last night, but after the convention had disposed of the suffrage question, very many were happy and very many were sorry, but everybody was relieved of the burden. It seemed that the Assembly was fed on too much speech-making and discussion on the question and there was no more order after the Lppez resolution had been disposed of. So I took my time and I ask the Chair whether a motion of this nature would be in order.

THE PRESIDENT. The amendment will be in order when we discuss that part of the Constitution.

EL PRESIDENTE. Lease el proyecto de constitucion.

EL SECRETATIO, leyendo: Insertense.

EL PRESIDENTE. Tiene la palabra el ponente del Proyecto.

INFORME ORAL DEL PONENTE, SR. SOTTO (F.).

SR. SOTTO(F.). Sr. Presidente, el Comite de Ponencia, mas que con honor y respeto, con verdadero placer comparece hoy ante esta respetable Convencion, con el Proyecto de Constitucion que ha sido eleborado en gestion tan labo-

riosa como tardia. En una organizacion de 87 miembros, como es el numero total de miembros del Comite de Ponencia; en una organizacion de 87 hombres libres, devotos del pensamiento libre y cultivadores de las propias ideas y principios, no era ciertamente una tarea facil que todos llegasen a un acuerdo; Es natural, mas que natural, conveniente, y mas que conveniente, necesario, que existen diferencias de ipinion entre unos y otros, siquiera para recordar la vieja sentencia de que del choque entre el metal y el pedernal, surge la hermosa luz que alumbra a todos. Y digo que por ser natural, conveniente y necesatio, la labor del Comite de Ponencia ha sido, necesariamente tambien, trabajosa hasta el punto de que no es un secreto la impaciencia que naturalmente ha despertado la tardunza de la labor del Comite de Ponencia, no solo entre los miembros de la Convencion, sino tambien en la misma opinion publica. Pero Roma no se construyo en un dia, y a creer en lo que dicen los escritos sagrados, el mismo Dios, con su omnipotencia, hubo de necesitar cierto numero de dias para c ompletar la creacion. Que mucho, pues, que nosotros humildes criaturas, con limitados alcances, proviniendo de diferentes regiones, aducados en varias escuelas, con principios no siempre paralelos, a veces diametralmente adversos, que mucho, pues, repito, Sr. Presidente, que el choque de opiniones ocurriese con mucho menudencia en las deliberaciones del Comite de Ponencia.?

Largas semanas empleo el Comite de Ponencia en pleno, para estudiar todos y cada uno de los reports sometidos por los varios comites de esta Convención. Hubo necesidad de prestar a tales reports toda la atencion a que eran acreedores. Esos reports eran obra de comites de la Convencion, expresamente, especialmente destinados para considerar materias determinadas tambien, y era logico presumir que cada report de comite contenia una sintesis, por decirlo asi, acabadas.....

de las diferentes ideas de todos y cada uno de los miembros componentes de cada comite. Despues, en el transcurso de los dias y de las semanas, el Comite de Ponencia habia llegado a una conclusion que no se si calificarla de triste o de afortunada, que era necesario que un grupo de, mismo comite de Ponencia tomase de un modo especial, bajo sus hombros, la atrea de preparar por lo menos un proyecto de constitucion que pudiera ser base para ulteriores estudios y consideraciones, no solo por parte del Comite de Ponencia, sino tambien por parte de la Convencion, y asi el Comite de Ponencia, obrando dentro de sus facultades, constituyo un subcomite de Siete miembros a los cuales se habia encargado el expreso trabajo de preparar un proyecto de constitucion. A las primeras de cambio, vioso enseguida el acierto de aquel medio. Los trabajos del subcomite de Siete se aceleraron. Habia lo que se llama in ingles expediency. Por otro lado, el subcommite habia recibido la invaluable ayuda de otro comite de miembros del mismo Comite de Ponencia, constituidos en consejeros tecnicos del subcomite de Siete. No es para ser narrado, señores ni mucho menos tadado el valor de la ayuda que ese comite de tecnicos ha dado al subcomite de siete. Con sus luces, con su ciencia, con su experiencia, y sobre todo con su buena voluntad, el comite de tecnicos ha sido algo asi como un faro para el subcomite de siete, en plena noche de profunda oscuridad. Las recomendaciones del subcomite de tecnicos aliviaron considerablemente el peso del trabajo del subcomite de siete, y si a estas dos circunstaicas buenas añadimos otra, como es la constante, la amable, la activa ayuda prestada al subcomite de siete y al comited de tecnicos, por el mismo Presidente de esta Convencion, no es nada fatuo decir que la labor del subcomite de siete, en la preparacion del proyecto de constitucion, si tenia que ser escabrosa, necesariamente por la indole del asunto, fue por rieles planos y faciles con la ayuda

y faciles con la ayuda, como he dicho, del subcomite de tecnicos, y del Presidente de la Convencion. Llevada a cabo la labor del subcomite de siete, con tan valiosos soportes, al seno del Comite de Ponencia en pleno, era natural que surgieran las mismas dificultades que habian ocurrido en los primeros dias de sesiones dicho comite. Otra vez las ochenta y siete cabezas, las ochenta y siete cabezas, maquinas intelectuales, moviendose y funcionando animadas todas por el deseo de tener un proyecto de constitucion que no solamente satisfaga a nuestro pueblo, sino tambien que no pueda encontrar ningun obstaculo en los Estados Unidos, a quines, como ustedes saben tenemos necesariamente que enviar el proyecto de constitubion.

Ibamos a repetir la suerte que habiamos adoptado en los comienzos, de entrar a debatir linea por linea, palabra por palabra, coma por coma, el proyecto de constitucion preparado por el subcomite de siete, y hubiera sido necesario volver a las anadadas y stropear todo el trabajo del subcomite. Teniamos todos, como creo que tienen todos y cada uno de los miembros de la Convencion, in mente, la idea de que es necesario acelarar el trabajo de la constitucion, porque de ello depende el pronto establecimiento del Commonealth, y porque del pronto establecimiento del Commonwealth depende que se comience cuanto antes el periodo transitorio de diez años. Sabemos positivamente que estamos nosotros preparando la independencia. Mientras no haya commonwealth, no se contaran los diez años del periodo transitorio, y mientras no tengamos una constitucion aprobada por el Presidente de los Estados Unidos y sancionada en plebiscito por nuestro pueblo, tampoco puede comenzar el Commonwealth. He ahi por que el Comite de Ponencia creyo que con gran acierto, despues de un estudio que han hechos sus miembros del proyecto preparado por el subcomite, opto por aprobar dicho proyecto en principio y inviarlo asi

asi a la Convencion para que esta Convencion, soberana autoridad en esta materia, sea quien formalmente estudie el asunto. Que sacabamos con debatir por semanas, por dias en el Comite de Ponencia, para despues repetir los mismos debates en el "floor" de la Convencion? Los ochenta y siete miembros del Comite de Ponencia, no son la Convencion, no son siquiera una mayoria de la Convencion, y si ahora es poco menos que imposible, en vista de las diferentes opiniones e ideas, soldar en una sola las opiniones de los ochenta y siete miembros del Comite de Ponencia, era claro que retendiendose el proyecto en el seno del Comite de Ponencia para un debate largo, no hubieramos hecho mas que perder el tiempo dentro del Comite de Ponencia, para luego reanudar los mismos debates, los mismos raparso, las mismas enmiendas, en el seno de la Convencion en pleno. Es por esto por que, caballeros de la Convencion, el Comite de Ponencia prefirio aprobar en principio el draft que hoy tenemos ante nosotros y someterlo respetuosamente a la Convencion para su ulterior consideracion y resolucion. Naturalmente, tambien, que la obra no es perfecta, ni siquiera semi-perfecta. Manos pecadoras al fin, lo ha cosido; manos humanos, y lo que a unos les pudiera parecer bien, para otros pudiera parecer de otra manera.

..... Y es natural que, en el seno de la Convencion, este proyecto de Constitucion tenga que pasar por el tamiz de una critica, de un estudio, antes de que dicho proyecto sea finalemte aprobado. Pero creo, personalmente, por lo menos, que la Convencion ha tenido un acierto ayer al aprobar ciertas reglas especiales que han de regir en la discusion del proyecto de Constitucion. Son reglas que no solamente no constriñen a nadie, no lo priva a nadie de su derecho a discutir el proyecto en todo o en detalles. Pero al mismo tiempo, señala ciertos limites a la discusion que, indudablemente, facilitaran mucho el camino final del proyec-

to. Este del debate general parece una cosa convenida en la Convencion, aunque, desde luego, no lo es en los Parlamentos. Un debate general, a nuestro entender, tal conforme esta consignado en las reglas especiales viene a ser algo asi como una revista general de todo el proyecto. General comment, general review, critica, en el mejor sentido de la palabra. No es la critica callejera en que todo consiste en buscar lunares; es la critica del hombre maduro y estudioso que el mismo halla flores en el camino como tambien espinas. Es el estudio, digamoslo asi, de todo el edificio de toda la obra, para ver si ella, con o sin arreglos, ulteriores, puede cemplir la necesidad para la cual ella se ha preparado. Supongo que doce turnos para un examen general del proyecto de Constitucion son mas que bastantes para que dada cual pueda exponer sus puntos de vista generales sobre el proyecto. Si a esto se añade despues el periodo destinado a las enmiendas, si las hubiere, evidentemente, podemos decir que dentro del escaso tiempo de que disponemos, dentro de la natural friza que debemos sentir por la aprobacion del proyecto, dentro de la necesidad de que no retardemos ni un solo dia el despacho de este asunto, creo, repito, que la Convencion tiene garantizada suficiente libertad de accion para lo que quiera disponer del proyecto que hoy tenemos en nuestras manos.

Quiero volver, Sr. Presidente, a mencionar el report de los diferentes comites de esta Convencion. Es evidente que hay reports que no han podido ser insertados, palabra por palabras concepto por concepto, dentro del proyecto de Constitucion. Habiendo sido independiente el trabajo respectivo de cada uno de los comites, tenia fatalmente que sentirse la ausencia de una conexion, relacion, concatenacion entre un report y otro. No podia existir la unidad que es necesaria en esta clase de trabajos. Y asi, por ejemplo, no seria dificil que entre un report y otro hubiese ciertos conflictos. Pero es un honor que debe acordarse a los varios comites de

la Convencion el hecho de que sus reports han servido como base principal en la preparacion que ha hecho el Comite de Ponencia de esta draft. Si los compaleros tiene un poco no de paciencia, pero si de benevolencia, no sera dificil que tal o cual precepto, tal o cual proposicion que a primera vista pareciera haber desaparecido, pueda ser hallado en el proyecto puesto que hay que ser francos cuando se habla entre compañeros, tengo sin embargo, debo tener la lealtad de deciros que tambien algunos preceptos no han podido ser incluidos en la Constitucion. Y no ciertamente porque les faltase meritos a tales preceptos, no$ el Comite de Ponencia es el primero en reconocer que tales proposiciones constitucionales seran excelentes, aunque el Comite difiria del Comite que habia recomendado dichos preceptos en cuanto a la propiedad de incluirlos como un precepto constitucion. En una organizacion tan grande como la nuestra, viniendo como todos venimos por primera vez a presentar nuestra Constitucion, ansiosos como estamos de ser libreros, quejosos como estamos de nuestra vida no libre hata ahora, los impulsivismos eran inevitables. Parecia como si quisieramos curar todos nuestros males solamente por medio de la Constitucion. Este es el punto de vista que en la mayor parte de los casos el Comited de Ponencia ha tenido en cuanta al dejar de incluir en el proyecto de Constitucion algunos de los preceptos que hemos encontrado en los reports de los varios comites. Buenos preceptos, buenos ideas, pero evidentemente o hubiera alargado considrablemente la Constitucion o seria mejor que, por no tratar de cuestiones fundamentales tales tambien de nuestro pais.
No hemos perdido de vista un punto cardinal en las deliberaciones del Comite de Ponencia. La necesidad de evitar todo peligro que implicase la mas remota posibilidad de que el proyecto de Constitucion nos fuera devuelto con algunos reparos del Presidente de los Estados Unidos. No es que pre-

tensiesemos enviar al Presidente de los Estados Unidos una obra acabada; pero, aun repitiendo lo que dije antes, pero aun repitiendo lo que yo dije antes, teniendo en cuenta que cualquier retroceso en la aprobacion de la Constitucion, habria necesariamente que rebotar en el pronto establecimiento del commonwealth, es por esto porque no tengo miedo en decires que nos hemos sentidos demasiado cautos hasta tal punto que en casos de duda, hemos preferido asegurar hasta donde fuera posible la no devoluci'on del proyecto a la convencion.

Voy a permitirme decir, Sr. Presidente, que dadas las prisas que hemos tenido, los del Subcomite de Siete en la preparacion del draft, contados como estaban nuestros dias para el trabajo, entorpecidos como nos hemos quedado por el tifon, no ha habido tiempo de ordenar muy bien la colocacion de las disposiciones contenidas en esta Constitucion, y es probable que los compañeros encuentren algunas disposiciones puestas indebidamente, erroneamente en un sitio en vez de estar en otro. Podremos, sin embargo, mantener la existencia de esas disposiciones sin perjuicio de aue si la Convencion lo quisiera, puede ser tralado tal o cual precepto en otro sitio de la misma constitucion.

MR. SANTOS. Mr. President.....

SR. SOTTO. Puesto que estamos bajo reglas especiales, Sr. Presidente, yo ruego tambien la especialidad de no dar cualquiera informacion sino despues de mi report. I am very willing to answer you after my report."

(Proseguiendo). En el mosmo Subcomite de Siete tampoco ha habido unidad de pareceres, aunque naturalmente en toda organizacion d democratica nos hemos regido por la regla de la mayoria. Por mi, puedo cecir, que algunos preceptos contenidos en este draft los he combatido en el seno del Subcomite algunos preceptos que no estan incluidos en este proyecto, yo hubiera querido que fuesen incluidos, y lo mismo que este vuestro servidor, ha pasado con los compañeros, pero tenemos que respetar el principio de la organizacion del Subcomite, no

11-

respetar el principio de la organizacion del Subcomite, no podriamos los del Subcomite de Siete comparecer ante el Comite de Ponencia divididos, mordiendonos los unos a los otros a cuenta de tal o cual voto disidente. Y es por esto pprque sacrificamos cada cual un poco y llegando al eterno remedio para todas las dificultades que es là transacción, es como el Subcomite de Siete ha podido suscribir este report y presentarlo al Comite de Ponencia. De todos modos, como he dicho antes, cualquiera imperfección, cualquier duda, cualquier precepto que se quiere quitar o incluir, todavia tenemos amplio tiempo, amplisima oportunidad durante el debate de este proyecto y en el periodo de las enmiendas. Hemos tenido naturalmente, en obediencia al fallo de la Convencion, que introducir el cambio radical en el proyecto impreso: me refiero, Caballeros, a la parte legislativa y en cuanto se refiere al sistema de las dos camaras, o sistema unicameral. Votado por la Convencion que debemos tener un gobierno unicameral, el Comite de Ponencia, su Subcomite de Siete, no habria de pretender no obedecer lo acordado por la Convencion. Yo he votado por un regimen bicameral, pero suscribi este informe por que? porque es la voluntad de la Convencion, es la voluntad expresada solamente en una votacion tambien solamne de esta Convencion que tuvieramos solamente una Camara. Es probable tambien que por virtud de dicho cambio algunas partes de la Constitucion o del de constitucion necesite mas reformas que las que hemos introducido. No debe olvidarse que habiamos presentado el proyecto a base de una legislatura bicameral y la votacion ordenada por la Convencion por un regimen unicameral no iba a afectar al capitulo referente al ramo legislativo, era necesario dar un recorrido a todo el proyecto para hallar la parte que quedaba afectada por el cambio de sistema. Yo comparo un proyecto de constitucion con una gran maquina; no se puede aflojar impunemente un tornillo sin que esto repercuta en todo el cuerpo del pro-

yecto. Hemos abierto los ojos para buscar donde puede haber efecto el cambio operado en el proyecto de constitucion por virtud del establecimiento del sistema unicameral, pero no sera extraño que todavia la Convencion, con el cuidado con que esperamos que estudiaria este proyecto, no seria extraño que la Convencion hallase otros tornillos que apretar por virtud del aflojamiento que se han hecho en otros tornillos.

Siendo solamente, Sr. Presidente, para un debate general, todavia la presentacion en este momento del proyecto de constitucion, quedando para mas tarde, segun nuestras reglas especiales, el periodo las enmiendas, el Comite cree que con las ideas generales que nosotros hemos expuesto ahora, mas el texto mismo de la Constitucion que hace varios dias estaba en manos de la Convencion, tenemos lo bastatnte para entrar ya a fondo en el estudio del asunto, y el Comite estara siempre atento a cualquier observacion, reparo, objecion o enmienda que la Convencion disponga.

Caballeros: los del Comite no comparecemos con orgullo ni tampoco con miedo ante la Convencion: no somos arrogantes porque reconocemos que toda la autoridad esta en manos de la Convencion, y que no hemos hecho otra cosa mas que preparar un material que pueda ser objeto de consideracion por parte de la Convencion en pleno; y no comparecemos tampoco con miedo porque sabemos que estamos ante una Convencion de hombres libres, donde cualquiera discrepancia de ideas no es obice para mantener cualquiera relaciones mutua, y porque estamos convencidos de que por encima de todo, conscientes de que estamos del deber de que se nos ha impuesto al aceptar el honroso cometido de ser un delegado a la Asamblea Constituyente, estamos convencidos, repito que la Convencion.... solamente tendra por norma un solo punto; tener pronto una constitucion para las Islas Filipinas para que con esa constitucion como llave, se abran las puertas del templo de la libertad pra nuestro pais.

titucion como llave, se abran las puertas del templo de la libertad para nuestro pais. HE DICHO.

SR. SANTOS. (E.). Mr. President, will the gentleman yield?

EL PRESIDENTE. El tiempo del orador ya ha expirado. Tiene la Asamblea inconveniente en que se le conceda cinco minutos mas? (La Asamblea: SI).

Puede formular sus preguntas el Delegado por Rizal.

THE PRESIDENT. The gentleman may yield, if he so desires.

SR. SOTTO (F.). Willingly.

MR. SANTOS (E.). Will the chairman of the committee on Sponsorship inform us as to whether the report of the Committee on Provincial and Municipal Governments had been taken into consideration or not?

SR. SOTTO (F.). Ese es uno de los puntos en que, como ya he anticipado antes el subcomite de siete ha creido que debera dejarse completamente en manos de la legislatura No hay nada, señores, tan novible, tan inestable como las organizaciones pequeñas de nuestro gobierno. Si pusieramos algo sobre organizaciones municipales o provinciales en la constitucion y a los dos meses de establecido el Commonwealth, nos encontraemos con que tales organizaciones deberan cambiarse, seria deficil si no imposible, porque tendriamos que empezar con enmendar la constitucion, y ese es el motivo por que ciertas materias que no son estrictamente de principio o fundamentales hemos creido, como todavia seguimos creyendo, que es mejor dejarlas a la Legislatura.

MR. SANTOS. Does not your honor think that the general precept regarding the organization of provincial and municipal governments will not be out of place in our constitution as in other constitutions?

MR. SOTTO (F.). Will you please give me an example?

MR. SANTOS. Well, just to call the attention of the Chairman of the Committee to the Constitution of Spain. There are certain provisions referring to provincial and

municipal governments, and also of France, and of other countries as well as China. Don't you think that general principles like those principles will not be out of place in our constitution?

SR. SOTTO (F.). Ya he dicho que el principal motivo que ha tenido el subcomite para no tocar nada en la constitucion que se refiere a la organizacion de las pequeñas corporaciones del gobierno provincial y municipal, ha sido p porque pudiera ser que la presente organizacion no esa buena. De hecho, en la Legislatura se han presentado muchos proyectos demostrando que nuestra resente organizacion municipal y provincial requiere algunos reformas, y teniendo en cuenta que cualquiera enmienda a la constitucion que se formalice durante el Commonwealth tendra necesariamente que pasar por la aprobacion del Presidente de Estados Unidos en y teniendo ~~xxxxxx~~ cuenta tambien el relativo corto tiempo de diez años para dedicarse a esos menesteres, seria preferible que el gobierno del Commonwealth dedique su principal atencion, la atencion nacional a los problemas tambien regurosamente nacionales, dejando a la Legislatura todo lo referente a esas cosas que podemos llamra cosas de casa.

SR. LAPAK. Para umas preguntas al Delegado por Cebu, Sr. Presidente.

EL PRESIDENTE. Puede contestarlas el orador, si le gusta.

SR. SOTTO (F.). Con mucho gusto.

SR. LAPAK. Si mal no he entendido a S. S., ha declarado aqui que el comite ha creido conveniente poner en la constitucion solamente los puntos fundamentales. No cree S. S. que la declaracion sobre autonomia provincial y municipal es un principio fundamental?

SR. SOTTO. (F.). Pudiera ser, si, señor; pero hay este reparo, no una objecion, una mera enumciacion de un principio no es nada mandatorio. Si S. S. me permite la

libertad de truncar un poco el lenguaje, yo dire que es una disposicion negativa. No obliga a la Legislatura dictar una ley. Es el sentir de la convencion que debe haber una mayor autonomia municipal, una mayor autonomia provincial, bueno, y que? Cual seria el efecto de esa disposicion en el terreno de la practica?

SR. LAPAK. Sabemos que es un principio que se dice por el gobierno de que las privincias y municipios son autonomos sin embargo, en la practica hemos visto que esa autonomia es solamente de palabra, pero no de hecho. No cree S. S. que seria mejor para cortar esa anomalia, poner aqui ese principio, respetando esa autonomic privincial y municipal?

SR. SOTTO (F.) En que forma quiria S. S. que se pusiera eso?

SR. LAPAK. Mediante la introduccion de algun precepto.

SR. SOTTO (F.). Por ejemplo.

SR. LAPAK. Bueno, es lo que pregunto, si como S. S. dice que no se ha puesto eso, porque no es principio y solamente se han puesto principios fundamentales, entonces vamos.....

SR. SOTTO (F.). En realidad de verdad, admito que la cuestion de la autonomia municipal y provincial es una cuestion de principio en un gobierno democratico, al right, pero la cuestion a discutir ahora es si tambien nuestras provincias y minicipios no gozan de sificiente autonomia, y la mejor ocasion para debatir eso, para considerar eso seria en la Legislatura y no en una constitucion.

SR. LAPAK. No cree S. S. que seria mejor que pongamos precisamente ese principio fundamental en nuestra Constitucion para que entonces la autonomia que estamos observando en la practica pueda ser cortada de raiz, porque la verdad es que de hecho los municipios y provincias no tienen autonomia, porque la autoridad esta casi acaparada,

centralizada por el departamento del gobierno central.

SR. SOTTO (F.). Voy a contestar a S. S. de dos maneras: primera, ya he dicho que una disposicion de caracter general tal comforme que adivido que es el paln de S. S. seria un poco menos que letra nuerta; seria un parrafo por puro lujo dentro de la convencion, porque no contendria una disposicion mandatoria.

SR. LAPAK. Y si presntamos esa disposicion mandatoria para introducir en este proyecto, no tendria el comite la bondad de aceptarla?

SR. SOTTO (F.). No cree S. S. que seria mejor hablar del caso cuando hayamos llegado a ese punto?

SR. LAPAK. Esta bien, y muchas gracias.

MR. BOCAR. Mr. President, I want to inquire from the chairman of the Committee on Sponsorship with regard to the Provincial and Municipal Governments, because as contemplated under this draft, we will have an election sometimes next year, possibly, May, June, or July. The proposition involving the provinces is that the provincial and municipal officials hold their offices under the Election Law and that their terms will expire in 1938. Under the draft of the Constitution, there will be an election this year for insular officials, so that we will have a separate date of election for insular and another for provincial and municipal officialss Does not the gentleman believe that as a matter of equality and convenience the Convention should set a uniform and fix date of election including insular, provincial and munisipal officials?

SR. SOTTO (F.). Es cuestion de opinion. Puede parecerle a S. S. conveniente; puede parecer a otros caballeros no conveniente, pero en terminos generales, yo le digo lo siguiente: hemos fijado el tiempo para los legisladores por la relacion que tiene con la eleccion del presidente del Commonwealth, un cargo enteramente nuevo que tendremos en el nuevo gobierno, y en

y en cuanto si habra o no elecciones para los otros funcionarios del gobierno, parece que seria mejor leer la ley Tydings-McDuffie McDuffie, y alli encontraremos algunas disposiciones sobre eso.

MR. BOCAR. Would the Committee accept an amendment to the effect that we insert a provision in the Constitution providing that the election next year be general election, not only to the Insular but also to the provincial and municipal officials?

SR. SOTTO (F.). I prefer to wait for that period when the amendment are to be presented.

MR. CABILI. Mr. President, will the gentleman yield to a question?

THE PRESIDENT. The gentleman from Ceby may answer.

SR. SOTTO (F.). With pleasure.

MR. CABILI. Under the draft of the Constitution, there is no mention of provisions as to the municipalities and provinces especially organized for the maintenance of their status quo. Inder our Organic Law, some of the provincial governors of these especially organized provinces are appointed by the Governor General. Now during the transition period from the present government to the Commonwealth, what will become of the governors of these especially organized provinces appointed by the Governor General since under the Constitution as drafted no mention is made as to how their position shall be fixed and how that position shall be fixed?

SR. SOTTO (F.). Creo que bajo el plan que tenemos ahora presente, se mantiene el presente de elegir, aunque dejando a la Legislatura la facultad de hacer electivos.. los puestos de legislador correspondiente a las provincias especiales; sin embargo, tengo la impresion de que la pregunta del compañero seria mas bien una preparacion para una enmienda que probablemente quiere introducir. Si

tal disposicion, como S. S. dice, no existe en el proyecto y S. S. cree que tal disposicion debiera existir, me va a perdomar que le diga que el camino no seria una interpelacion, sino una proposicion de enmienda.

MR. CABILI. Would you be willing to accept an amendment to this effect tending to better this situation so that in the event of.....

SR. SOTTO. When the amendments are presented that will be the proper time to see what the Committee decides.

MR. CABILI. I ask this question because if there is a fundamental issue there is no necessity of presenting an amendment, but in the absence of a satisfactory measure we wish to present this amendment.

MR. SOTTO (F.). You may be sure that if the amendment is right the Convention will approve that.

SR. ABELLA. Sr. Presidente. para una pregunta al ponente.

EL PRESIDENTE. EL orador puede contestar, si lo desea.

SR. SOTTO (F.). Si, señor.

SR. ABELLA. Quisiera saber por que la constitucion no habla nada sobre el lenguaje oficial?

SR. SOTTO (F.). Es otro asunto que hemos creido que debe dejarse a dos factores: al factor tiempo y al factor de la conveniencia, ademas de las circunstancias. De todod modos la Legislatura puede adoptar seo; pudiera ser que despues de 10 años ni el ingles ni el castellano sea el lenguaje oficial, ysi pusieramos desde hoy una disposicion adoptando como lenguaje oficial tal o cual idioma, nos encontrariamos que para derogar esa disposicion tendriamos que enmendar esa disposicion. El Comite ha creido que en lo posible deben evitarse ocasiones en que sea necesario enmendar la constitucion.

SR. SISON. Podria S. S. informarme de si la idea que sugiere S. S. es que se hagan las elecciones para cargos provinciales y municipales?

SR. SOTTO (F.). No sugiero nada. Sugiero lo que esta en el "draft." Parece que esta claro el proyecto.

SR. SISON. Me refiero al Comite?

SR. SOTTO(F.). El Comite se atiene a lo que esta en el "draft" u no sugiero nada.

EL SR. SISON. El Comite opina que no debe haber elecciones con respecto a cargos provinciales y municipales?

SR. SOTTO (F.). La Ley Tydings-McDuffie define eso. Es inutil que el Comite pretenda decir nada, cuando hay una ley mandatoria a la cual estamos amarrados.

SR. SISON. Comprendo, pero lo que quèria saber de S. S. es si preferiria S. S. que se hiciesen elecciones para cargos insulares nada mas.

SR. SOTTO (F.). Es inutil que prefieramos, cuando hay una ley congresional que dispone.....

EL SR. SICON. No abriga S. S. alguna esperanza de que se pueda enmendar esa ley?

SR. SOTTO (F.). Si vamos por el camino de las esperanzas, lo mejor no es esperar para no desengañarnos.

SR. SISON. Supongamos que esta Convencion inserte alguna disposicion en la Constitucion haciendo que las elecciones sean generales, cree S. S.que eso cabria?

SR. SOTTO (F.O. Yo no se lo que dispondra la Convencion. Presente S. S. la disposicion y la Convencion resolvera.

SR. SISON. Yo me atengo a lax recomendacion, si es que hay alguna recomendacion.

SR. SOTTO (F.). Ha leido S. S. el draft?

SR. SISON. Si, señor.

SRL SOTDO (F.). Que dice?

SR. S SON. No dice nada.

SR. SOTTO (F.). Luego no recomienda nada.

SR. SISON. Es una recomendacion negativa, porque hace una recomendacion en cuanto a las elecciones para car-

gos insulares, pero se calla en cuanto a cargos provinciales y municipales.

SR. SOTTO (F.). Usted busca una recomendacion y usted dice que esa recomendacion no la encuentra en el draft; entonces le digo que el Comite no recomienda nada.

SR. JOSE. S. S. ha dicho que el gobierno es igual a una maquina y la falta de un tornillo puede estropear las misma. Yo quisiera preguntar si se ha omitido una pieza, el asiento del gobierno, porque he visto que no esta designado aqui el asiento del gobierno. Creo que el gobierno que vamos a organizar es un gobierno ambulante.

SR. SOTTO. (F.). No estando fijada por la ley congresional la capital del pais y no habiendo nada en la Constitucion nuestra que se oponga a esa disposicion, es claro que se mantiene Manila como capital, aunque naturalmente y personalmente me gustaria que la capital del Archipielago fuera alguna vez Baguio, que es el distrito del Caballero.

SR. JOSE. Pero no cree S. S. que se esencial determinar el asiento del Gobierno del Commonwealth?

SR. SOTTO (F.). Voy a repetir la misma contestacion que di a otro compañero. Esto de las capitales es muy variable, sobre todo, en un pais como el nuestro que es pequño, es preferible no atar demasiado las manos al Gobierno. De todos modos, este es un asunto que puede ser resulto en cualquier tiempo por la Legislatura.

MR. BUSLON. Just for an information. I would like to know if this Commission does not necessarily carry with it the permanent offices and permanent personnel.

SR. SOTTO (F.). Esta designara el personal que necesita la Comision permanente, asi como la asignacion de sus salarios y el tiempo que va a trabajar. Constituimos una organizacion permanente, que en cierto modo venga a desempeñar las funciones del Senado, y lo es materia de la Legislatura.

21

MR. BUSLON. But once these members of the National Assembly are elected to the Permanent Commission, I understand that they represent two kinds of office as members of the Assembly and as members of the Permanent Commission?

MR. SOTTO (F.). Yes, sir.

MR. BUSLON. And I understand also, if I am right that they will have different offices as such members of the Assembly and other offices as such members of the Commission.

SR. SOTTO (F.). Supongo que la Legislatura o la Asamblea Nacional que se menciona en la Constitucion, nombrara entre otras cosas en su mente, un comite de arreglo, de local, y eso corresponde a ese comite

MR. BUSLON. Does not Your Honor believe that the creation of this Permanent Commission will involve the same expense as now being involved by the present Senate?

SR. SOTTO (F.). No se si se gastara mucho o poco, pero desde luego que no habra ninguna remuneracion adicional para ellos. Ellos son miembros de la Legislatura, aunque para los efectos del impeachment y nombramientos, se les separara como Comision permanente.

MR. BUSLON. But Your Honor believe that there will be extra expense besides being expense as members of the Assembly,

SR. SOTTO. Seran elegidos por los miembros de la Asamblea.

SR. BUSLON. Comprendo, pero la naturaleza de esa Comision, como es permanente, creo que debe tener tambien personal distinto del de la Asamblea.

SR. SOTTO (F.). Esa Comision no tiene mas de vida que la Legislatura a que sus miembros pertenecen. Segun el dsaft, despues de organizarse la Asamblea y despues de organizar su personal, se procedera al nombramiento de la Comision permanente, y al termino de los tres o cuatro años

de ejercicio de los Representantes, terminara tambien el ejercicio de esos Comisionados.

EL PRESIDENTE. Ha expirado el tiempo del orador.

SR. BUSLON. Sr. Presidente, registro un turno en contra del draft.

EL PRESIDENTE. Tiene la palabra el Delegado por Sorsogon, Sr. Reyes.

23

SPEECH BY DELEGATE REYES(J.)

MR. REYES (J.) - Mr. President and Gentlemen of the Convention: The draft of the Constitution prepared by the Sub-Committee of the Committee on Sponsorship and aprpved by the parent body with but little discussion and no deliberation suffers, aside from considerations of form and phraseology, from various importan defects. Credit, however, must be given to the members of the Sub-committee for the rapidity with which the complete draft was envolved out of the more or less voluminous reports of the numerous standing committees which were created one month after the opening session of this Convention.

The draft now presente is in the main a conservative document in the sense that it omits many debatable topics included in the Committee Reports and is based principally on the existing organic laws of the Philippines, the United States, and some European countries. The document undoubtedly has its merits; for those provisions which embody the doctrines and principles of the past are already well tested in the crucible of actual experience. Without minimizind the virtues of the plan as fomulated by the sub-committee of Seven, it is undoubtedly in order to point out the fundamental defects either of inclusion or exclusion in the hope that the Convention may consider them and, if convinced of their existence, apply the necessary corrective measures.

The first fundamental defects is the mistaken conception, of what a Constitution should be. There are articles which are plainly of a statutory character. It is true, of course, that the so called newer constitutions contain may such provisions. But, precisely because of this fact, they are

likely to be highly temporary in nature due to the attempt to prescribe remedies for evils that have ever-changing phases. The old idea of a Constitution is that it determines the structure of the government, the location of sovereignty and the relations between the government and its citizens. Since all government originates from the intention ti establish an impartial authority between clashing desires and interests, individual or collective, the fundamental law that govens its existence should have a neutral aspect and should not in itself adopt any set of permanent doctrines or principles on economic or social matters, leaving such questions to be decided by the legislative authority which will be responsive to all the variations in the will and temper of the people in different epochs.

The second and perhaps, even more fundamental objection to this document is the fact that it contains no definite philosophy of government. The part dealing with General Principles and the Bill of Rights expresses the individualistic liberalism of the eighteenth and nineteenth centuries; the last part providing for vast extensions in the sphere of governmental functions, including the delegation of legislative authority to the executive in periods of emergency, authority to expropriate private property beyond the limits now recognized by law, almost unlimited power to interfere in the affairs of industry and agriculture as well as to compete with existing business, and even a precept relating to the awarding of contracts is a reflextion of the fascination exerted by current tendencies in many lands. Whether or not these tendencies will remain or disappear when emergency conditions are overcome can not be foretold. It is certainly premature to place them as

permanent fixtures in the fundamental law of the country.

While conservatism characterizes the draft as a whole, the desire to deviate from the accustomed paths could not be suppressed altogether. Thus the text of the provision referring to freedom of the press is taken not from the American but from the Continental model. Also in one short sentence the existing law regarding the civil rights of both sexes in the conjugal partnership is completely recast. Referring to the first instance, it should be noted that the guarantee of the freedon of the press in the American Constitution has already a generally accepted interpretation in our jurisprudence; while the proposed text will need to be interpreted anew and, since it is modelled after similar constitutional provisions in European Constitutions, it is to be presumed that the judiciary will take into consideration the generally accepted ineterpretation in thos countries. It is undeniable that freedom of the prese in those lands is much narrower than in the American Republic.

In at least one instance, this constitutional draft does not carry a salutary principle to its ligical conclusion. In accordance with the English budgetary system, the National Assembly is prohibited from increasing the items recommended by the Executive in the general appropriation act. But, the companion principle that independent legislation involving a charge upon public revenues should be recommended by the Executive or else carry provisions for raising additional revenues to meet the estimated outlay is omitted. Thus the English plan of budgetary procedure is adopted in part and also rejected in part.

The document contains important omissions, the most significant of which is the absence of any provision in-

creasing the autonomy of our municipalities and provinces. Thomas Jefferson declared local government to be the backbone of democracy; William Mckinley gave local autonomy a most prominent place in his instruction to the Philippine Commission. But, it is impossible to deny the fact that actually the Provinces and Municipalities in the Philippines do not exercise the autonomous powers that should be theirs. Other principles that may well deserve to be included are those providing for the subordination of the military to the civil authority, prohibiting the passage of class legislation, and autorizing the calling of a constitutional convention whenever there is need for a genaral revision of the Constitution.

This draft contains provisions dangerous to the vitality of democratic principles. The creation of a Permanent Commission of the National Assembly composed of only twenty-five members with power to confirm appointments opens the door, unless the details of the provisions are radically modified, to possibilities most dangerous to the existence of a real democracy in the country. It is not an exaggeration to say that this Permanent Commission will probably be not the creatures but the master of the body which will give it its being. If this be so, then a radical modification of its membership is indicated, if the democratic principle is to be preserved.

In one instance is the lack of a definite philosophy of Government more apparent than in the failure to set up a counter-balancing authority to the powers conferred upon the Executive Department. From ancient times, the check and balance principle has been recognized. The more famous doctrine of the separation of powers is but one of the

2409

expersions of this more fundamental amd more general rule. It is the converse of the axiom that in government, as perhaps is also true in nature, power begets power, and the weight of an object as well as its attractive force depends upon the mass and its density. This ducment prepared by the eminent gentlemen composing the membership of the Sub-committee of the Committee on Sponsorship, forgets altogether the moral to be drawn from this principle.

There is a vast concentration of authority in the Executive Department in normal periods; in emergencies the limits of the Executive Power are vastly extended; but no parallel authority is created that can serve as a check upon such power. It is true that impeachment is provided for; but this process now has a criminal connetation and would presumably not be used in cases of differences of policy. It is also true that the people can express their will at the polls during the elections; but since the length of these intervals is fixed, the judgment on the record of the Executive is made dependent not upon the changes in public opinion, but upon the fixed periods of the calendar.

It may be said that a defect of this character is inherent in governments of the presidential type. The observation is correct; but it should be borned in mind that this inability to make the government responsive to public opinion at any given time necessarily has consequences that are sometimes of a very serious nature. And, the consequences may be more serious if the temperament of the people is not of the kind that yields to compromises demanded by practical considerations.

This draft of our Constitution is not indeed the work of a single political group; it seems it would not be in accordance with the truth to say that the Majority has

had a greater intervention than the Minority in its creation. But, notwithstanding this collaboration, it does not contain within itself the seeds of immortality; unless radically modified, it is merely a Constitution for the present, for but a fleeting moment in the life of the Filipino Nation. The Pàlitical phase of our collective personality may find a genuine and characteristic expression in the future. In this document, such an expression is not to be found. I THANK YOU.

SPEECH BY DELEGATE ROXAS

MR. ROXAS. Mr. President and gentlemen of the Convention: I think the Convention should consider itself deeply indebted to the distinguished gentleman from Sorsogon, Mr. Reyes, for his able, scholarly and dispassionate criticism of the draft submitted to this Convention. There are many who on the point of theory or principle would agree with the gentleman from Sorsogon. There are those who will find equal ground of criticism in the draft now before us. But, Mr. President, government is an art; it is a practical science not a theory, and governments can only be successful if in its structures due consideration is given to the habits, the customs, the character and, as McKinley said, even to the idiosyncracies of the people. A government that will be excellent in England with more than seven centuries of tradition behind it may not be successful in or mostly appropriate for a country like ours, or even in a country like the United States of America. A government that may be sound and appropriate for American may not be the best government for the people of Spain, for the people of Switzerland, or for the people of the Philippine Islands. That is why, Mr. President, in the preamble of this constitution, it is clearly and definitely stated that this government that we formulate in this Constitution expresses the ideals, the visions and the propensities of the people according to circumstances in which we find ourselves.

I will endeavor to the best of my ability and in my humble way to make reply to the remarks make by the gentleman from Sorsogon with reference to this draft. The first statement that he makes is that this constitution does not, is not, based on a definite philosophy. In fact, he states

that there is no philosophy underlying its provisions. My answer is that this constitution has a definite and well defined philosophy, not only political but social and economic. A constitution that in 1776 or in 1789 was sufficient in the United States, considering the problems they had at that time, may not now be sufficient with the growing and ever-widening complexities of social and economic problems and relations. If the United States of American were today to call a constitutional convention to draft a constitution for the United States, does any one doubt that in the privisions of that constitution there will be found definite declarations of policy as to economic tendencies; that there will be matters which are necessary in accordance with the experience of the American people during these years when vast organizations of capital and trade have succeeded to a certain degree to control the life and destiny of the American people? If in this constitution the gentleman will find declarations of economic policy, they are there because they are necessary to safeguard the interests and welfare of the Filipino people because we believe that the days have come when in self-defense, a nation may provide in its constitution those safeguards, the patrimony, the freedom to grow, the freedom to develop national aspirations and national interests, not to be hampered by the artificial boundaries which a constitutional provision automatically impose.

What is the definite philosophy? This constitutional draft is premised on a clear-cut political hypothesis. This hypothesis underlies the whole philosophy of this document. What is it? The hypothesis is that soverignty resides in the people. It is so declared in one of the principles enunciated in this document, that sovereignty resides in the

people and all parts of the machinery of government emanates from them. The government is the creature of the people and the government exercises its powers and functions in accordance with the will and purposes of the people. That is the first principle, the most important one underlying this document. Second, the government established in this document is, in its form, in our opinion, the most adapted to prevailing conditions, circumstances and the political outlook of the Filipino people. Rizal said: "Every people has the kind of government that they deserves" That is just another form of expressing the principle in politics enunciated by the French philosopher when they said: "Every people has the right to establish the form of government which they believe most conducive to their welfare and their liberty."

Why have we preferred the government that we establish in this draft? Because it is the government with which we are familiar. It is the form of government fundamentally such as it exists today; because it is the only kind of government that our people understand; it is the kind of government we have found to be in consonance with our experience, with the necessary modification, capable of permitting a fair play of social forces and allowing the people to conduct the affairs of that government. That is why we have adopted the presidential system. The delegate from Sorsogon says, Mr. President, that the executive powers in this constitutional draft are so great. They are too powerful; there is no check to the executive powers, except, he said, when the fatal day of the calendar arrives when another executive takes his place. The insinuation, Mr. President, is rather not against this draft but is an argument against the presidential form of government, and in favor of the parliamentary form of government. That is to say, this draft is criticized because

it does not contain the necessary authority in the hands of political parties and in the hands of the people to recall the executive and to recall the legislature, if you please, when neither the executive nor the legislature should undertake functions or politics which run counter to the wishes and desires of the people. Mr., Mr. President, that is precisely the point of difference between the presidential system and the parliamentary system. Under the presidential system, we elect an executive and a legislature for a definite term. Under the parliamentary system, the parliament is elected for a definite term; at other times without a definite term but subject to the power of the cabinet to dissolve and subject to the power of paliament to appeal to the people. In some instances.....

that they may decide controvercies between the cabinet and the parliament. The reason why the parliamentary system has been a success in England and has been conducive to greater and larger democracy is, I repeat, because there exists a tradition of may centuries behind the Englsih people. As Woodrow Wilson said, self-government is not an object that could be given or assigns that can be learned. Self-government must grow with the people and with the nation. It must be built up on character. Why is an English judge the model of impartiality, if not of wisdon? Because behind him there have been a series and a long train of English judges that have performed the duties of their office with perfect impartiality. and an Englishman would rather break his word or break his fortune than break a tradition of the English mation. Why is there no constitution in England and yet constitutional government in England exists with the same regidity as if a written constitution existed? Because that unwritten constitntion in England is a part of the nature and the character of the Engl

and the character of the Englsih peäple, and no Englishman, however high in station or low in the social ladder, would dare to violate the constitutional traditions of the English race.

But we are not favored with a tradition in the Philippine Islands. What would happen, Mr. President, if in the Philippines we permitted that an adverse vote of the legialature should provoke a new election of the chief Executive? Everytime the chief executive should veto por barrel legislation or everytime the chief executive should refuse to appoint a candidate for office recommended by the majority of the legislature, he will be threatened with an adverse vote, and if he does not want to lose his office, he must bow down with servility to the legislature, and the result is this: he would lose his honor, damage the country, but save his office. That is what would happen. We want to guarantee to the legislature, we want to guarantee to the judiciary, we want to guarantee to the chief executive, a fixed tenure so that they can exercise the duties and functions of their office with independence of character, responsible only to their conscience, their God and the people who have placed them in office.

No definite philosophy? No checks and balances? Why, Mr. President, you will find in this draft of the constitution all the system of American constitutional law embodied in its provisions. No checks and balances? Yes, there are. And I venture to say, Mr. President, that in this draft the theory of checks and balances is being carried with greater detail than in the constitutional provisions of the United States. I shall mention a few examples.

In the United States judges are appointed by the President, with the advice and consent of the Senate. The check is exerted by the Senate. In the Philippines our experience has shown that that system is not entirely satisfactory. In many instances, the chief executive must bow down to the dictation of the Senate if he wants his appointments confirmed. We have therefore provided another check. We have provided that nominations for the judiciary shall originate not in the chief executive, neither in the legislature, but in that department of the government whose peculiar and special function it is to administer justice, the supreme court. We provide that the supreme court shall submit to the chief executive a list of three persons for each vacancy to a court of first instance or to the court of appeals, and the chief executive shall make the nomination from this list and submit it to the permanent commission for confirmation. There you have two checks on the power of the chief executive -- the power to initiate appointments that shall reside in the supreme court, and the revisory function which shall be exercised by the permanent commission.

Now, Mr. President, many will argue that this is a cumbersome process. Many will claim that it is not necessary for the permanent commission or any other agency of the national assembly to confirm appointments in view of the fact that the power of the chief executive to make nominations is already circumscribed by the power to make the list provided in this constitution and given to the supreme court. But, Mr. President, there is a political philosophy behind this plan, a political philosophy which I hope the members of this convention shall

keep ever present in their minds when they consider the provisions regarding the judiciary. It is this: One of the principal functions, if not the most important function, of the judiciary is to safeguard personal or individual rights guaranteed in the constitution. The supreme court is the only bulwark of the people against the abuses of the government that theyestablish in the constitution, to defend the rights whose invasion they provide against in the bill of rights. "No man shall be deprived of his property without just compensation; the freedom of the press shall forever be safeguarded; no law shall be passed providing an establishment of reli religion," etc., the most priceless rights of individuals. And against whome are these rights to be defended? Not against other individuals, but against invasion by the government itself. That is to say, against that invasion perpetrated by the executive abusing his powers, or an invasion perpetrated by the legislature by passing lasw that may destroy or render nil these individual rights. And the judiciary rises facing the two other powers of the government to protect the individuall Now, if that is one of the most important, if not the most important function of the judiciary, why should appointments to the judiciary be left exclusively in the hands od the executive, and if you please, of the legislature, the very departments of the government against whose abuses the people should be defended? That is to say, if the executive had the sole power of appointment of officers to the judiciary, the president could render nil every constitutional guaranty in the constitution by appointing judges that will sustain his worst abuses of power. Confirmation by the legislature, a combination between the legislature and the executive

to establish a dictatorship in the country, would have the same effect. This whole constitution would be rendered a nullity through a combination of the legislature and the executive if we did not have an independent judiciary whose.....

existence would not depend on the whims and caprices or desires of anybody or both of them, and that is the reason, Mr. President, why, in order to make the judiciary as independent as possible, as self-perpetuating and as we humanly can, we provide that appointments for the judiciary shall originate from a list submitted by the Supreme Court to the Chief Executive, and the Chief Executive shall choose his nominees from this list and submit it to the revisory -- checking function of the National Assembly through the Permanent Commission. That is the philosophy of this draft with respect to judiciary.

What is the philosophy with regard to the Legislature? The Legislature is a body of direct representatives of the people elected by the qualified electors of the districts that may be provided by the National Assembly. They come and participate in this government as the representatives of the peopl , and because of that, the constitution entrusts in them the lw-making power. The gentleman of the Convention know that there a several system adopted in several countries regarding the granting of legislative power to the legislative body. For example, we have the Federal Consdtitution of the United statew which enumerates the grant of power. In other words, the Legislature can only exercise those powers that are c arly enumerated in the provision of the Federal Constitution. Any powers which does not appear in this enumeration or any power which may not be impiled from the powers granted or any power which may not result--this is the resultant power--from the enumeration of from the totality of the powers granted are deemed to be

u

under the grant of constitutional powers to the Congress of the United States. On the other hand, we hve the constitutions of several states of the American Union that are granted in general terms. The legislative bodies of those States have complete legislative powers subject to certain exceptions; first, the exceptions that are contained in the constitutions guaranteeing the bill of rights; second, the powers that have been given to the American congress under the Federal Constitution; third, the contractual political obligation on the part of different states as members ot the Union, that with their consent as ascertained by the provisions of the American Constitution, that document is amended so that additional powers are granted to the American congress. These additional powers should be considered as new restrictions to these powers of the several States Legislatures.

Ordinarily, Mr. President, the system of Government that is Federal in nature, like the one that theyhave the In United States, like the one that they have in Poland, like the one that they have in Mexico and in manh other federated countries, the system is one of enumerated powers. But in a unitary country, a country that has to deal with small political sovereignty, a country like ours, constituted by a people espressing whole and one sovereignty with a comunity of interest, the system generally is a unitary system. One government in a federated small nationalities, but one nation to govern and exercise jointly over all territories. The political sub-divisions are creatures of the constutitions of the government granted under the constitution. Let us not, Mr. President, confuse our provinces in the Philippine Islands with the States in the American Union. Let us, Mr. President, attempt to accord to our provinces and municipalities the same category that the States of the American Union have. They are not the same politically. The

American States exercise sovereingnty which belongs to them and of wh ch they ~~a~~ can not be deprived. They are members of the Federation organized with their consent. True, the National Government of America in mor and more gorowing into the concept of the National Government as distinguished from a federated Government. Nevertheless, t he fundamental basis of t he American Constitutional law and the political compact of the American States is bassed on the Independent sovereignty of the different states of theAmerican Union. But in the Philippines, Mr. President, our provinces exercise no independent sovereignty--separate and distinct from that of the nation. They are only the creatures of the Legislature. They can be born or I might say they a re born that they live and they die in accordance with the will and behest of the National Government. Why have we not included the in draft provisions: regrading the autonomy of our provinces and m municipalities? The reason is obvious, Mr. President, local governments of this character, being creatures of the National Government to exercise their functions for the general interest of the whole people, they should always be under the control, jurisdiction and powers of the legislature. For very obvious reason, I repeat, let me give an example. Suppose, Mr. President, we insert in the constitutionl the provincial governor and municipal president shallhave more autonomous powers specifying the powers; if you do not specify the powers, the provisions of the constitution would just be an exposition of powers, and nt constitutional precepts of an obligatory nature.

We would gain nothing, Mr. President, by inserting in the Constitution a provision such as greater and ever greater autonomy shall be given to porvinces and municipalties It would mean nothing at all. It would be a recommendation to the Legislature which may be befulfilled, and the question whether a parti

tion whether a particular measure grants or decreases the autonomy of the provinces and municipalities is simply a matter of opinion and not even the courts intervene or interfere on a question of that kind. But supposing specifically, Mr. President, that the provincial governors shal have the powers to appoint provincial treasurers, that municipal president shall not be removed from office except to certain procedure fixed by law. Mr Pre sident, Why, shall we tie up the hands of the Legislature forever in the constitution with respect to the present system of provincial and municipal governments? Are we despairing our growth and the advance of our people and their capacity to adapt a system of provincial and municipal government to the changing circumstances and conditions of an ever-changing world? In the United States there is a great number doing away with the elective hands of local government in the place of commission and the work of government by experts, the best constituencies of the world, as admitted by every one, are the logical counties of France. Why? The French people have discovered through their experience that in order to be sure of efficient administration in small municipalities and counties have trained administration for the affairs of forty thousand of fifty thousand people any more than you can improvise an administraters of a corporation with fifty thousand pesos of capital. That is why the French have attained the practice of training administrator and make selection of men who have been trained for the particular functions of government to which they shall be appointed. There isn in the Saturdy Evening Post, Mr. President, a very abel article by will Durant, one of the greatest philosophers of America that lives today, where he says: "Democracy is now on the corss-road; on the one hand, you have the dictatorship of Europe commanding a

great machine of progaganda that reaches every book and corner of the world, announcing and publishing the successes of the dictators of Europe, trying to establish dictatorship as the best form of government." On the other side, you have communism and Facism, the crime, the success of democracies, and urging the stablishment of the power and control of government by the proletariats and as will Durant syas: "If democracy wants to save itself from being absorbed by the absolute powers of dictators, on the one hand, or be swamped by the growing tide of communism and Basicism, democracy must defend itself, not by theories, but by the application of sound common sense." Let me, Mr. President, in the discussion of this constitution, merely repeat the now old fashoned formulas of liberty and democracy, nor should we accept these terms as infallible under all circumstances. Principles may be true, principles may be wide, but when you apply principles and have to deal with human nature, principales suffer in the process . Human nature is not adapted to the principles so that to change nature in accordance with the mandates or the exigendes of the principles, you apply the principles to human nature and you change and you modify principles so that in its contact with human nature you may be able to obtain the closest approach, the parfection that you can possibly imagine. So I say, Mr. Preisdent, when this draft made reference to provincial and municipal governments, our purpose was not to curtail the local autonomy but simply to recognize that our present system of provincial and municipal governments has not as yet attained perfection and the hope and the faith that as our experience grows by the great system of trial and eroor, we may be able to evolve a system os municipal and provincial governments in the Philippines, that while giving to the inhabitants of

each province the greatest amount of participation in their local affairs, may yet safegurad the efficienty that should characterize all those systems.

With regard to the excecutive, Mr. President, with regard to the legislature, I will say, before giving that subject, that the system we have adapted in this constitution is the system of general grant of power. Our legislature will have all the powers ot legislation except those which appear in the limitations that are enumerated in this Constitution. They have the whole field except a few prohibited sections and inthe borderline of this prohibited teritoryis erected an independent judicial, an independnet executive, an independent legislature to safeguard that prohibited protion because the people of the country through this constitutional convention after the constitution is ratified by the epople, so will the executive. The philosophy und rlying this Constitution with regard to the executive is that the executive under the presidential system must be assured f a fix tenure and an opportunity to independently exercise the functions of his office in accordance withhis desire to develope the constitution and thus serve the best interests of the country. He is not to be harrassed on one side andhavehis hands tied by the boundaries of theother side, but as an independent agency to exercise his functions to the best interst of the country. We donot provide an opportunity for reelection, Mr. President, Why? Because in examining the results of the present system int he United States of a four-year tenure without restriction as to reelection, it is the opinion of unbiased observers of our political parties and creeds in the United States, that the Presidents of the United States, and I am making reference to no one in particular, the presidents of the United States irresistibly, nomatter how

wise, how patriotic, the Presidents of the United States irresistibly in response to the dictates of human nature during the first years of their administrtion, busied themselves more in preparing for their reelection at the end of four years than in serving the country as a whole. We are, therefore, providing a for a six-year period sot that the president, when he takes the oath of office, knows that he has six-year's time, emple opportunity to serve his country, answerable only, I repeat, to his conscience, to God and tothe people who elected him.

There is no check, the gentleman fro Sorsogon says. Suppose he is inefficient. Suppose he is guilty of culpable negligence in the exercise ofhis functions.There is no check? Yes, there is a check. There are many checks. The first is public opinion. Oh, public opinion is unsubstantial; bulic opinion? What can it do? Yes; Mr. President, such things may be said against the compulsory and cercive nature of public opinion. But I venture to say that there is no public official in this government, or any government, that is willing or isable, for a sufficient length of timek, to dare public sentiment and to face an adverse public opinion in the whole country, no matter how powerful sooner or later public opinion cries, because every man wants to be well thought of; no manwants to be president merely for his personal satisfaction; every man who is worthy of his office andwho succeeds to be elected to his office, is a man who will measure his success in terms of public approval of his conduct and of the amount of good that he can do for his country, rather than the amount of personal satisfaction that he derives of having been able to do everthing that he wanted to do. That is the first check.

The second check--impeachment. In this draft, the procedure of impeachment is left in an expeditious way to the permanent commission. The permanent commission shall exercise the functions of the house of reprresentatives in the United States. They are going to formulate the charges of a small group that will wit permanently. They are going to indict the president by a majority vote. Then that indictment is carried to the national assembly and the case is tried before the national assembly and the case is tried before the national assembly under the presidency of the chief justice of the sumpre court.

On what grounds may a president be impeached? Gentleman can read that ih this draft. One of the grounds is culpable negligence; the others is treason. Another is being guilty of a serious felony or high crime.

Culpable negligence. Is there anything untoward or wrong that a president may do which cannot be included in any of one of these classifications? I think not, Mr. President. I think not, and any president the willfully defise the constitution, say president who disobeys the mendable, the legal, and tonstitution mandates of the supreme ocurt or of the legislature, may be impeached. Any president Who commits a crime, who orders innocent men and women being shot to death, or any president who plots secretly to overthrow personal liberty and establish a dictatorship, may be impeached.

There is a check. No check? What else is there that can be proposed to check the powers of the chief executive? Mention was made here-the fight of the people to elect another executive. I have already touched upon that subject and I shall not repeat. It will not be satisfactory in the Philippine Islands.

Now, Mr. President, I wish to say in conclusion that the structure of government that you will find in this constitutional draft is very similar to the present system of govrnemtn tthat we now have, with the necessary variation because of the establishment of a unicameral system of legislature. This is a republican form of government. We comply with the provisiojs of the tydings-McDuffie law. Why is it a republican form of government? I shallnot go into that. Everybody knows it is a republican form of government because it is a representative government, because the powers of government wre exercised by the representatives of the people in their behalf and in thier names Second, it contains a bill of rights. Yes, it contains the same bill of rights; it contains the same enumeration of individual rights that appears in the Jones Law, in the constitution of the United States, with a few addition. I say with a few additions, because if individual rights, or the bill of rights, contained the enumeration of those rights which the people want to reserve to themselves and do not allow t the legislature to legislate on them, we know and we have sensed that in the Philippine Islands, becaue of our social structure and social conditions here, there are a few rights which we believe shaid be separated from the jurisdiction of the legislature to legislate about them One of them is, the freedom of the individual Filipino not to be improsoned for failure to pay debts or to pay taxes. That is a very impeftent innovations, Mr. President, Read the provisions of the bill of rights in the United States. In the federal constitution, in the Jones Law in the state constitution, even in the constitutionso fo Europe, those that have a bill of rights, generally those constitutitions simply say "No citizens or no person shall be improsoned for debt." Why?

44

In roder to safegaard the poor menof this country who are compelled to pay a cedula tax and if, because of their precarious economic condition they are incapalbe of paying that tax, the present laws of this country authorize their incarnation. We belive that that is an outrage against liberty and against the equality of man and eauality of opportunity. We believe that a man should not be placed in jail because he has no marye to pay his taxes, becasue the people and the country donot give him an opportunity, a fair chance to earn a living and earn enough money to pay his taxes. If this draft of the constitution is apporved, there will be, I hope, no complaint agasint the cedula tax. Let the rich man ppy the tax. He uses an automobile. Why should he not ay for the upkeep of the roads? These who are capable of paying, why should not they be compelled to pay? But the poor man, if he is incapable of paying the tax, civil process may be used to compel him to pay, but he cannot be put to jail because he is imfortunately a poorman, and incapabbe of paying that tax. There was a proposal in our committe, Mr. President--may I reveal this fact--to abolish the cedula tax. If there is a provision prohibiting the incarceration of a man who, because of poverty, cannot pay his tax, there should be no objection to the cedula tax. Why are we going to tie up the hands of the legislature in the matter of looking for revenues for the sup po sup or of provincial and municipal governments? Why dry up the fountaino of the public revenues for the future? Are we aure thqt we can find substitute for the cedulas? Are we sure sure that municipalties may be able to live, and provinces sould be abel to support their general expenses under the road a and bridge fund if the cedula is abloshed? Why, Mr. President, can we not leave this matter in the hands of the legisla-

ture? They will be reprsentatives of the Filipino people as we are sittin heretoday. Let us believe and hope and trust that in deciding this question about which the constitution is silent the legislature will fix ajd solve them with the same high purposes as animate us now, with the same noble aims that impel our acts amd our opinions and our convictions here, and that they would act with the same perfect guarantee of purposes and aim as animate each and every member of hhis convention.

Mr. President, I think that with all its defects, this draft may be a biasis for consideration and deliberation of this chamber. I believe it is not perfect; there are some provisions in this draft to which I am opposed, and in the appropriate time, I shall try to propose the necessary amendments. But I think ? Mr. President, that as far as rhe scheme and the principal structure of go ernment as outlined in this drat is cojcerned, I believe ih is unjust, to ay the least, to affirm herethat those who drfafted this draft were ignoratn of the purposes of a constitution of and what a constitution should be. Second, that ther is no philosophy underlying this draft. I think Mr. President, if this draft has any defect, it is that it contains a whole lots of philosophy.

Now, with respect to economic provisions that are inserted ther and the extraordinary powers that are given to the President, this is not a creation of the brain, if they have any, of the men who compose the committee that drafted this conwtitutio . The power, the permission given here to the legislature to delegate to the President in cases of national emergench or in time of war, the power to carry out or to declare national policy, is not or9 tinal among the members of that committe. This simply an adoption of the N. R. A. Legislation in the United States.

That is to say, when t he usual processes of democracy are too cumbersome or inadequate to cope with t he crisis, or a serious n tional emergency, as in the case of war or in case of famine or a case of widespread devastation, then the Legislature may simply day to the President of the Commonwealth or of the Philippine Republic that a national emergency exists, and all te powers and resources of the Governments should be devoted tothat national emergency, and the President is authorized to apply any money in the Treasuryof the Govermentnot t o exceed too hundred million pesos in order to relive distress in order to keep the course of credit or emplyjent and sof roth an save the country from distress, and then the President is made the administrator of that. But that is only incase of national emergency. Now, the extraordinary power given to the President here is the power to increase or decrease tariff rate. In t he United States, that is being done with the aid of constitutional amendment. I believe the Supreme Court of the United States has conceded the constitutional ityof that act of congres authorizing the president to increase or decrease tariff rates to up 50 percent of said rates; but in the Philippines Islands, ther was a need of giving that expressed authorization, because of the opinion laid by Judge Advocate general of the War Department to the effect that a law passed by this legislatu giving, that authority to the Governor-Ganral was of doubtful legality. For that purpose,this provision has been inserted.

Mr. President, I wish t o repeat, we donot claim here originality or perfectioj in this draft. We expect your cribicims. We know that it is capable of great improvements; we know that every mejber here can contribute to

make this draft a better and more perfect one. Therewill br no resentment on the part of the members of the committee who drafted this constitution against fair andjust critisisms and against the draft. May I commend to your intelligent andgenerous perusal? We ask of you to formulate your critisms; present your amendments. We want to hear your views, and after you hafe expressed yours, we would like like to give our won views. I believe it is possible--it is probable--that we will agree on thefinal draft of this donstitution so that whenthe final day of the convention may come, we may be able, with hearts happy, joyous and confident that we have rendered good service to the country, to step up one byone by this table and put our names on this constitutional draft, and thank almighty Good that we have done something for the liberty and happiness of our country. I thank you

THEPRESIDENT. The time of the gentleman from Capiz has expried.

LEVANTAMIENTO DE LA SESION

EL PRESIDENTE. En vista de que laCamara necesita el salon durante los dias 7 y 8 del actual, si no hay objcion por parte de la SAsamblea, se levanta la sesion de la convencion hasta el 10 de Noviembre de 1934 a las diez d de la mañana.

Eran las ~~XX~~ 7:05 p. m.